

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:06CV289-03-T  
[1:04CR114]**

<b>JAMES HARVEY SMITH,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b><u>ORDER OF DISMISSAL</u></b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

**THIS MATTER** is before the Court on Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 filed September 14, 2006.

Pursuant to Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts, a petitioner must sign his motion under penalty of perjury. Petitioner did not sign his petition. Consequently, this Court is dismissing Petitioner's motion without prejudice for failure to comply with the requirements of Rule 2(b)(5) of the Rules Governing Section 2255 Proceedings.

The Court cautions Petitioner that if he decides to re-file his § 2255 motion, he must be cognizant of the Antiterrorism and Effective Death

Penalty Act's one year limitations period. It appears that the mandate from the Fourth Circuit issued on August 8, 2006. Therefore, Petitioner's one year limitations period would begin to run 90 days from August 8, 2006. Petitioner must be mindful of that calculation if he chooses to re-file his motion.

**IT IS, THEREFORE, ORDERED** that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is hereby **DISMISSED WITHOUT PREJUDICE**.

Signed: May 3, 2007

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

